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OFFICE OF PETITIONS

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In re Application of	:	
Richard H. Sherman, et. al.	:	
Application No. 09/853,288	:	ON PETITION
Filed: May 11, 2001	:	
Attorney Docket No. PD-00-1016	:	

This is a decision on the petition under 37 CFR 1.137(b), filed September 28, 2005, to revive the above-identified application.

The petition is **GRANTED**.

The application became abandoned for failure to reply to the non-final Office action mailed November 3, 2004. A Notice of Abandonment was mailed August 25, 2005.

The petition satisfies the requirements of 37 CFR 1.137(b) in that petitioner has supplied (1) the reply in the form of an amendment; (2) the petition fee of \$1,500; and (3) an adequate statement of unintentional delay.

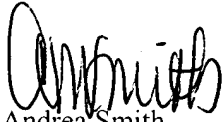
37 CFR 1.137(b)(3) requires a statement that the entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition pursuant to 37 CFR 1.137(b) was unintentional. Since the statement contained in the instant petition varies from the language required by 37 CFR 1.137(b)(3), the statement is being construed as the statement required by 37 CFR 1.137(b)(3) and petitioner must notify the Office if this is **not** a correct interpretation of the statement.

The Office acknowledges receipt of one (1) sheet of drawing containing Figure 1 filed with the petition on September 28, 2005. Acknowledgement is also given to the \$1,590 four (4) month extension of time, filed May 27, 2005. However, in no event will the statutory period for reply expire later than SIX MONTHS from the mailing date of the non-final action. Therefore, an extension of time under 37 CFR 1.136 must be filed prior to the expiration of the maximum extendable period for reply. See In re Application of S., 8 USPQ2d 1630, 1631 (Comm'r Pats. 1988). Since the \$1,590 extension of time fee, filed May 27, 2005, was subsequent to the maximum extendable period for reply, this fee is unnecessary and will be refunded to petitioner by Treasury Check, in due course.

A review of the record fails to indicate that a change of address has been submitted. Since the address given on the petition differs from the address of record, a courtesy copy of this decision is being mailed to the address on the petition. If appropriate, a change of address should be filed in accordance with MPEP 601.03. All future correspondence regarding this application will be directed solely to the address of record until otherwise instructed.

The application file is being referred to Technology Center Art Unit 2137, for review of the amendment filed with the instant petition.

Telephone inquiries concerning this decision should be directed to the undersigned at (571) 272-3226.

A handwritten signature in black ink, appearing to read 'Andrea Smith', is positioned above the printed name.

Andrea Smith
Petitions Examiner
Office of Petitions

cc: The Law Offices of Kenneth Float
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